

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Petition for)	
Redetermination of:)	
)	DOCKET NOS. 17554, 17613, 17687
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

[Redacted] (taxpayer) claimed three separate sales tax refunds pursuant to Idaho Code § 63-3640 for purchases made between May 1, 2003 and August 31, 2003.

The amount the taxpayer claimed for the three refunds totaled \$1,014.35. The Sales Tax Audit Section of the Idaho State Tax Commission reviewed the taxpayer's refund claims and issued refunds totaling \$833.54. The Commission issued denials of refund on August 27, September 30, and October 28, 2003 in the amounts of \$51.70, \$57.90, and \$71.21, respectively.

[Redacted] filed protests and requested redeterminations on August 21, September 23, and October 22, 2003. The Commission acknowledged the protests in letters dated, August 27, September 30, and October 28, 2003, respectively. [Redacted] FACTS

The taxpayer is a building contractor located in [Redacted], WA. The refund claims were made pursuant to Idaho Code § 63-3640. The 2003 legislature enacted House Bill 400, which raised the sales tax rate from 5% to 6%. The legislature also enacted House Bill 452, which created a new statute, Idaho Code § 63-3640. This statute states:

63-3640. CONTRACTS ENTERED INTO BEFORE EFFECTIVE DATE OF INCREASED TAX.

(1) Commencing May 1, 2003, and ending June 30, 2005, the purchase, use, storage or other consumption of tangible personal property which is otherwise subject to the taxes imposed by this chapter by persons defined in section 63-3609(a), Idaho Code, shall be exempt from one cent (1¢) of the taxes imposed by sections 63-3619 and 63-3621, Idaho Code, if:

- (a) The tangible personal property is purchased, used, stored or otherwise consumed for incorporation into real property; and
- (b) The tangible personal property is purchased, used, stored or otherwise consumed in regard to a project performed by such person pursuant to a qualified contract; and

(c) The taxpayer claims the exemption in the manner provided by subsection (3) of this section.

(2) As used in this section, the term "qualified contract" means a contract which:

(a) Is a written contract; and

(b) Was in effect on April 15, 2003, or was submitted for bid or bid in written form on or before April 15, 2003, and subsequently became a written contract; and

(c) Was negotiated or bid based upon the sales or use tax being five percent (5%); and

(d) Requires the cost of the sales or use tax to be borne by the contractor.

(3) A person entitled to the exemption granted in subsection (1) of this section may submit a claim for refund to the state tax commission for the amount of one cent (1¢) of the tax imposed by sections 63-3619 and 63-3621, Idaho Code, if it has actually been paid by him. The claim for refund shall include:

(a) A copy of a written contract which is a qualified contract; and

(b) A detailed invoice prepared by the seller showing all items of tangible personal property purchased by the claimant, the sale of which is subject to the exemption granted in subsection (1) of this section; and

(c) A document signed by the purchaser certifying that the tangible personal property shown on the invoice required by subsection (3)(b) of this section has in fact been used by him on the project to which the qualified contract relates.

(4) Upon receipt of the claim for refund, the state tax commission shall review the claim and, if it finds it to be proper, shall pay the refund together with interest from the date that the claim was filed at the rate established by section 63-3045, Idaho Code, within thirty (30) days from the date the claim was received by the commission.

(5) The use or incorporation into real property of any tangible personal property upon which the exemption provided by subsection (1) of this section has been claimed pursuant to any contract other than a qualified contract shall be a misdemeanor.

(6) In addition to the criminal penalties provided by subsection (5) of this section, the use or incorporation into real property of tangible personal property upon which the exemption provided by subsection (1) of this section has been claimed pursuant to any contract which is not a qualified contract shall subject the user to a penalty of three (3) times the sales or use tax otherwise due under this chapter to be enforced and collected as provided by sections 63-3634 and 63-3635, Idaho Code.

(7) In the case of a retailer who makes sales of tangible personal property to any person entitled to the exemption granted in subsection (1) of this section who is for any reason unable to collect one cent (1¢) of the tax imposed by sections 63-3619 and 63-3621, Idaho Code, from the purchaser, the retailer shall be entitled to claim the refund otherwise available to the purchaser. The claim for refund shall be filed in the manner prescribed by subsection (3) of this section. Nothing in this subsection shall excuse the retailer from reporting sales and use taxes at the full statutory rate on all taxable sales made during the period to which his sales or use tax return relates. If a refund claim is filed concurrently with the return, the refund claimed may be credited against the tax due on the return. Any retailer who claims a refund for any taxes actually collected from the purchaser shall be subject to a penalty of three (3) times the sales or use tax refund improperly claimed to be enforced and collected as provided by sections 63-3634 and 63-3635, Idaho Code. (Emphasis added.)

The Tax Commission has interpreted this statute as allowing contractors to claim a refund of the additional one percent rate increase implemented by House Bill 400 on purchases of building materials for contracts entered into or bid prior to April 15, 2003. The items claimed by the taxpayer for which this refund was denied were purchases of motor vehicle parts and supplies, equipment rentals, tools, and other items not incorporated into real property.

DISCUSSION

Under the Idaho Sales Tax Act, contractors improving real property are defined as the consumers of the materials they install. Idaho Code § 63-3609 states:

63-3609. Retail sale -- Sale at retail. -- The terms "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

Idaho Code § 63-3640, therefore, gives some protection to contractors who bid on qualifying contracts prior to April 15, 2003, prior to the sales tax rate increase. Since contractors are not retailers they cannot pass on the increased cost of materials to their customers, as retailers would be able to do. In fact, if a contract indemnifies the contractor against a sales tax increase the contract does not qualify for the refund. The intent of the statute was to provide relief for purchases of building materials only. It was not intended to apply to purchases of items that would be consumed by the contractor and not installed into realty.

The Tax Commission prepared a document titled “How to Claim a Refund for the 1% Increase in Sales Tax on Building Materials.” The taxpayer’s protest relies on Section IV of this document titled: “What Is a ‘Non-Qualifying Contract?’” Subsection (3) reads: Equipment purchase and rental contracts; and contracts for the retail sale of building materials and supplies not related to a qualified real property improvement do not qualify.

The taxpayer states that one can imply from this statement that purchases of equipment and rental contracts that are related to a qualifying contract will qualify for the refund. The Tax Commission notes that the title of the document states that the refund applies to building materials. Also, Section II states that materials that qualify for the reduction or refund in sales tax include “tangible personal property (TPP) that is purchased, used, stored or otherwise consumed for incorporation into real property.”

The current Idaho Code § 63-3640 is almost identical to a statute enacted by the Idaho legislature with House Bill 698 in 1986. At that time the legislature raised the tax rate from 4% to 5%. The Tax Commission’s interpretation of the current statute is consistent with its interpretation of the previous statute, i.e., that the 1% refund only applies to purchases of materials that are incorporated into real property as stated in Idaho Code § 63-3640(1)(a).

WHEREFORE, the Notice of Deficiency Determination Refund Denials dated August 27, September 30, and October 28, 2003 are hereby APPROVED, AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that [Redacted] refund claim is DENIED.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]_____